



CONSUMER PRODUCT SAFETY COMMISSION

(CPSC Docket No. 13-C0003)

Whalen Furniture Manufacturing, Inc., d/b/a Bayside Furnishings, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 C.F.R. § 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Whalen Furniture Manufacturing, Inc., d/b/a Bayside Furnishings, containing a civil penalty of \$725,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by (insert date that is 15 calendar days from publication date).

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 13-C0003, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Mary B. Murphy, Assistant General Counsel,
Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission,
4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7809.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

January 31, 2013

(Date)

Todd A. Stevenson

Secretary

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of:

WHALEN FURNITURE
MANUFACTURING, INC.
d/b/a Bayside Furnishings

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) CPSC Docket No.: 13-C0003
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SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Whalen Furniture Manufacturing, Inc., d/b/a Bayside Furnishings (“Whalen”), and the staff (“Staff”) of the United States Consumer Product Safety Commission (“Commission”) hereby enter into this Settlement Agreement (“Agreement”) under the Consumer Product Safety Act, 15 U.S.C. §§ 2051-2089 (“CPSA”). The Agreement and the incorporated attached Order resolve the Staff’s allegations set forth below.

THE PARTIES

2. The Staff is the staff of the Consumer Product Safety Commission, an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051-2089.

3. Whalen is a corporation organized and existing under the laws of the State of California, with its principal corporate office located at 1578 Air Wing Road, San Diego, California, 92154.

STAFF ALLEGATIONS

4. Between January 2006 and April 2008, Whalen imported and distributed into the United States approximately 7,739 juvenile beds in the shape of a boat (“Boat Beds”) under the Bayside Furnishings brand. The Boat Beds were sold nationwide, for between \$699.00 and \$999.00.

5. The Boat Beds included toy chests located as the “bow” of each unit with a 20 pound lid that could be placed up and remain in a fully opened or closed position. The Boat Beds are “consumer products” “distributed in commerce,” as those terms are defined or used in sections 3(a)(5), (8) and (11) of the CPSA, 15 U.S.C. § 2052(a)(5), (8) and (11).

6. The Boat Beds are defective because the toy chest lid hinge support mechanism could fail during use, allowing the lid to fall down rapidly. This poses a serious trauma and strangulation hazard and risk of death.

7. On November 2, 2007, Whalen received a report that a toddler died when a toy chest lid fell on his head, trapping his neck and head inside the toy chest.

8. Whalen obtained sufficient information to reasonably support the conclusion that the Boat Beds contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death. Whalen failed to immediately inform the Commission of such defect or risk as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. §§ 2064(b)(3) and (4).

9. Despite having information regarding the Boat Bed’s defect, Whalen did not file

its Full Report with the Commission until March 20, 2008, after the Staff directed Whalen to do so. Whalen knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4) as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

10. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Whalen is subject to civil penalties for its knowing failure to report as required under section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

RESPONSE OF WHALEN FURNITURE MANUFACTURING COMPANY, INC.

11. Whalen denies the Staff’s allegations, including but not limited to, that the Boat Beds contained a defect that could create a substantial product hazard or create an unreasonable risk of serious injury or death and that Whalen failed to timely notify the Commission in accordance with section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

12. Whalen believed that the report it received did not represent a legitimate incident. Whalen was aware of no prior injuries involving the lid hinge. The products were tested by a third-party testing agency and passed toy chest safety tests.

AGREEMENT OF THE PARTIES

13. Under the CPSA, the Commission has jurisdiction over this matter and over Whalen.

14. In settlement of the Staff’s allegations, Whalen shall pay a civil penalty in the amount of seven hundred twenty-five thousand dollars (\$725,000.00) within twenty (20)

calendar days of receiving service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the CPSC via www.pay.gov.

15. The parties enter into this Agreement for settlement purposes only. Neither the Agreement, nor the fact of entering into this Settlement Agreement, constitutes the evidence of, or an admission of, any fault, liability, or statutory or regulatory violation by Whalen or any admission by Whalen of the accuracy of any allegations made by staff.

16. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

17. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Whalen knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission as to whether Whalen failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

18. The Commission may publicize the terms of the Agreement and the Order.

19. The Agreement and the Order shall apply to and be binding upon Whalen and

each of its successors and/or assigns.

20. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject Whalen and each of its successors and/or assigns to appropriate legal action.

21. The Agreement may be used in interpreting the Order. Understandings, agreements, representations or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification or alteration is sought to be enforced.

22. If any provision of the Agreement or the Order is held to be illegal, invalid or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Whalen agree that severing the provision materially affects the purpose of the Agreement and the Order.

Dated: January 1, 2013

WHALEN FURNITURE MANUFACTURING, INC.

By: _____
Kenneth J. Whalen, President
Whalen Furniture Manufacturing, Inc.
1578 Air Wing Road
San Diego, CA 92154

Dated: January 1, 2013

By: _____
Sheila A. Millar, Esquire
Keller and Heckman, LLP
1001 G Street, NW
Washington, DC 20001

Counsel for Whalen Furniture Manufacturing, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Mary T. Boyle
Acting General Counsel

William J. Moore, Jr., Trial Attorney
Division of Compliance
Office of the General Counsel

Dated: January 3, 2013

By: _____
Mary B. Murphy
Assistant General Counsel
Division of Compliance
Office of the General Counsel

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of:)
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WHALEN FURNITURE)
MANUFACTURING, INC.)
d/b/a Bayside Furnishings)
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_____)

CPSC Docket No.: 13-C0003

ORDER

Upon consideration of the Settlement Agreement entered into between Whalen Furniture Manufacturing, Inc. (“Whalen”), and the U.S. Consumer Product Safety Commission (“Commission”) staff, and the Commission having jurisdiction over the subject matter and over Whalen, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED that Whalen shall pay a civil penalty in the amount of seven hundred twenty-five thousand dollars (\$725,000.00) within twenty (20) days of service of the Commission’s final Order accepting the Settlement Agreement. The payment shall be made electronically to the CPSC via www.pay.gov. Upon the failure of Whalen to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Whalen at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 31st day of January, 2013.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2013-02442 Filed 02/04/2013 at 8:45 am;

Publication Date: 02/05/2013]